

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 532

SPONSOR: Comprehensive Planning Committee; Health, Aging, and Long-Term Care Committee and Senator Crist

SUBJECT: The Good Samaritan Act

DATE: March 8, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Fav/CS
2.	Herrin	Yeatman	CP	Fav/CS
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute for the committee substitute (CS) extends immunity from civil liability under the Good Samaritan Act to any person whose acts or omissions are not otherwise covered under the act and who participates in emergency response activities under the direction of or in connection with local emergency management agencies, the Division of Emergency Management of the Department of Community Affairs, or the Federal Emergency Management Agency. The person would not be liable for any civil damages as a result of care, treatment, or services provided gratuitously in such capacity and resulting from any act or failure to act in such capacity in providing or arranging further care, treatment, or services, if such person acts as a reasonably prudent person would have acted under the same or similar circumstances.

This CS amends section 768.13, Florida Statutes.

II. Present Situation:

Division of Emergency Management

Part I of chapter 252, Florida Statutes, is the “State Emergency Management Act.” Under ch. 252, F.S., the Governor may declare, by executive order or proclamation, a state of emergency if he or she finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency must continue until the threat or danger has been dealt with, but may continue for no longer than 60 days unless renewed by the Governor. The declaration of a state of emergency may suspend regulatory statutes, orders, or rules of any state agency, if strict compliance with the statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency. Upon the declaration of a state of

emergency by the Governor, any person acting in an official capacity under the Governor is covered by sovereign immunity.

The Division of Emergency Management, under ch. 252, F.S., and 40 C.F.R. parts 300, 355, 370, and 372 handles all aspects of emergency management for natural and man-made disasters in Florida. The Division of Emergency Management assists communities with emergency preparedness, response, recovery and mitigation. This division also coordinates state agency support for local governments in emergencies and supports the Governor by acting as the Chief Emergency Management Official. This division has 116 FTEs and was appropriated \$260,353,807 for FY 2002-03.

Local Emergency Management Agencies

Section 252.38, F.S., provides for the effective and orderly governmental control and coordination of emergency operations in response to an emergency by placing each county within the Division of Emergency Management's jurisdiction. Each local emergency management agency, as provided for in s. 252.38, F.S., covers a county unless it is part of an interjurisdictional emergency management agreement that is recognized by executive order or rule of the Governor. A local emergency management agency is responsible for developing a county emergency management plan and program that is coordinated and consistent with the state comprehensive emergency management plan and program.¹ Such agencies are also required to have a director meeting certain qualifications that is appointed by the board of county commissioners or the chief administrative officer of the county.² In addition, municipalities are encouraged to create municipal emergency management programs and to coordinate their emergency response activities with those of the county emergency management agency.³

Federal Emergency Management Agency

The Federal Emergency Management Agency, a former independent agency, became part of the new Department of Homeland Security in March 2003. The Federal Emergency Management Agency is tasked with responding to, planning for, recovering from and mitigating against disasters. The Federal Emergency Management Agency coordinates the efforts of various volunteer programs designed to respond to emergencies. Citizen Corps Councils help drive local citizen participation by coordinating Citizen Corps programs, developing community action plans, assessing possible threats and identifying local resources. The Medical Reserve Corps coordinates volunteer health professionals, as well as other citizens with an interest in health issues, to provide ongoing support for community public health needs and resources during large-scale emergencies, such as assisting emergency response teams, providing care to victims with less serious injuries, and removing other burdens that inhibit the effectiveness of physicians and nurses.

¹ S. 252.38(1)(a), F.S.

² S. 252.38(1)(b), F.S.

³ S. 252.38(2), F.S.

Sovereign Immunity

Article X, s. 13, of the State Constitution, authorized the Florida Legislature to waive sovereign immunity by stating that, “Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.” The doctrine of sovereign immunity prohibits lawsuits in state court against a state government, and its agencies and subdivisions without the government’s consent. Section 768.28, F.S., provides that sovereign immunity for tort liability is waived for the state, and its agencies and subdivisions. Section 768.28(5), F.S., imposes a \$100,000 limit on the government’s liability to a single person and for claims arising out of a single incident, the limit is \$200,000. Section 768.28, F.S., outlines requirements for claimants alleging an injury by the state or its agencies. Section 11.066, F.S., requires a claimant to petition the Legislature in accordance with its rules, to seek an appropriation to enforce a judgment against the state or state agency. The exclusive remedy to enforce damage awards that exceed the recovery cap is by an act of the Legislature through the claims bill process. A claims bill is a bill that compensates an individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.

Section 768.28(9), F.S., defines “officer, employee, or agent” to include, but not be limited to, any health care provider when providing services pursuant to s. 766.1115, F.S. (the Access to Health Care Act), any member of the Florida Health Services Corps, as defined in s. 381.0302, F.S., who provides uncompensated care to medically indigent persons referred by the Department of Health, and any public defender or her or his employee or agent, including among others, an assistant public defender and an investigator.

Pursuant to s. 768.28(9)(a), F.S., an officer, employee, or agent of the state may not be held personally liable in tort or named as a party defendant for any injury that results from an act, event, or omission of action in the scope of her or his employment function unless the officer, employee, or agent acted in bad faith or with malicious purpose or exhibits wanton and willful disregard of human rights, safety, or property. The sole remedy for injury or damage that results from the act or omission of an officer, employee, or agent of the state or any of its subdivisions, acting in his or her official capacity, is an action against the governmental entity or head of such entity. The factors required to establish an agency relationship are: (1) acknowledgment by the principal that the agent will act for him; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent.⁴ The existence of an agency relationship is generally a question of fact to be resolved by the fact-finder based on the facts and circumstances of a particular case. However, if a party fails to produce sufficient evidence that proves an agency relationship or if the evidence, as presented by both parties, would lead a reasonable person to only one conclusion, the court may decide the issues as a matter of law.⁵

Florida Volunteer Protection Act

Section 768.1355, F.S., provides that any person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation, except for reimbursement for actual expenses, shall be considered an agent of

⁴ *Goldschmidt v. Holman*, 571 So.2d 422 (Fla. 1990).

⁵ *Campbell v. Osmond*, 917 F. Supp. 1574, 1583 (M.D. Fla. 1996), citing *Eberhardy v. General Motors Corp.*, 404 F. Supp. 826, 830 (M.D. Fla. 1975). See also *Stoll v. Noel*, 694 So.2d 701 (Fla. 1997).

such nonprofit organization when acting within the scope of any official duties performed under such volunteer services. Volunteers shall not incur civil liability for any act or omission by such person which results in personal injury or property damage if the volunteer is acting in good faith within the scope of official duties performed as a volunteer and the volunteer was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances. The immunity for volunteers under s. 768.1355, F.S., does not extend to any injury or damage that was caused by any wanton or willful misconduct on the part of such person in the performance of such duties.

Immunity under the Good Samaritan Act

Section 768.13, F.S., the “Good Samaritan Act,” provides immunity from civil liability to:

- Any persons, including those licensed to practice medicine, who gratuitously and in good faith render emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, F.S., or a state of emergency which has been declared pursuant to s. 252.36, F.S., or at the scene of an emergency outside of a hospital, doctor’s office, or other place having proper medical equipment. The immunity applies if the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances;
- Any health care provider, including a licensed hospital providing emergency services pursuant to federal or state law. The immunity applies to damages as a result of any act or omission of providing medical care or treatment, including diagnosis: which occurs prior to the time that the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency, in which case the immunity applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following surgery, or which is related to the original medical emergency. The act does not extend immunity from liability to acts of medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another or after stabilization of the patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the immunity applies to any act or omission of medical care or treatment which occurs prior to stabilization of the patient following the surgery;
- Any health care practitioner who is in a hospital attending to a patient of his or her practice or for business or personal reasons unrelated to direct patient care, and who voluntarily responds to provide care or treatment to a patient with whom at that time the practitioner does not have a then-existing health care patient-practitioner relationship, and when such care or treatment is necessitated by a sudden or unexpected situation or by an occurrence that demands immediate medical attention, unless that care or treatment is proven to amount to conduct that is willful and wanton and would likely result in injury so as to affect the life or health of another. The immunity extended to health care practitioners does not apply to any act or omission of providing medical care or treatment unrelated to the original situation that demanded immediate medical attention.

III. Effect of Proposed Changes:

Section 1 amends s. 768.13, F.S., to extend immunity from civil liability under the Good Samaritan Act to any person whose acts or omissions are not otherwise covered under the act and who participates in emergency response activities under the direction of or in connection with local emergency management agencies, the Division of Emergency Management of the Department of Community Affairs, or the Federal Emergency Management Agency. The person would not be liable for any civil damages as a result of care, treatment, or services provided gratuitously in such capacity and resulting from any act or failure to act in such capacity in providing or arranging further care, treatment, or services, if such person acts as a reasonably prudent person would have acted under the same or similar circumstances.

Section 2 provides that this CS shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this CS have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS will reduce the civil liability of persons who participate in emergency response activities under the direction of or in connection with local emergency management agencies, the Division of Emergency Management of the Department of Community Affairs, or the Federal Emergency Management Agency.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Persons who participate in emergency response activities often do so as part of the organization of local efforts by local governments or nonprofit organizations and the Division of Emergency Management of the Department of Community Affairs and the Federal Emergency Management Agency coordinate emergency response efforts *rather than* direct such local volunteers. The CS extends immunity from civil liability under the Good Samaritan Act to persons who participate in emergency response activities *under the direction of or in connection with* local emergency management agencies, the Division of Emergency Management, or the Federal Emergency Management Agency. It is unclear whether the CS is creating an agency relationship between these specified agencies and persons who participate in local emergency response activities so that sovereign immunity would apply, or in the alternative, whether immunity is extended to such participants under the Good Samaritan Act as specified in the CS.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
